IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2902 OF 2022

Mrs. Sarika Prashant Kadam ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Kuldeep Patil i/b Ms. Saili N. Dhuru, for Applicant.
Mrs. Ashwini. A. Takalkar, APP for State/Respondent.
Ms. Devyani Kulkarni, for Respondent No. 2.

CORAM:- N. J. JAMADAR, J.
DATED:- 29th AUGUST, 2023

ORDER:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) This is an application for pre-arrest bail in connection with CR. 497 of 2021, registered with Kamothe Police Station, Navi Mumbai, for the offences punishable under Sections 406, 420 and 506 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) Mr. Vinod Bhosle, the first informant lodged a report with the allegations that the applicant was residing with her husband – Prashant, the co-accused, in the same housing society as that of the first informant. The applicant represented the first informant and his wife that her husband-Prashant was dealing with builders. After establishing rapport and gaining the confidence of the first informant and his wife the applicant, according to the first informant, made them to invest amount with Prashant on the assurance of returning double the amount under a period of one and half years to two years.

4) Believing the representations of the applicant and her husband-Prashant, the first informant claimed to have invested an amount of Rs.12,20,000/-. As the said amount along with the return thereon, as promised, was not repaid, the first informant persued the applicant and co-accused Prashant. Thereupon only an amount of Rs.1,53,000/- was returned. Eventually, a cheque drawn by Prashant was also dishonoured on presentment. When the first informant insisted on repayment of amount, he was threatened with dire consequences. The first informant further alleged that it transpired that the applicant and the co-accused had duped other investors also, in a similar fashion, to the tune of Rs.65,73,000/-. Hence, the report.

5) Applicant's husband – Prashant came to be arrested. Apprehending arrest, the applicant approached the learned Session Judge, who declined to exercise the discretion in favour of the applicant. Hence, this application.

6) Mr. Patil, the learned Counsel for the applicant submitted that the applicant had been falsely roped in for being the wife of the principal accused – Prashant. In fact, the applicant had no role in the alleged transactions between the first informant and other investors, on the one part, and the co-accused – Prashant, on the other part. To lend support to this submission, Mr. Kuldeep Patil, the learned Counsel for the applicant, invited the attention of the Court to the loan agreements executed between the investors as 'lender' and Prashant, the co-accused, as the 'borrower'. It was submitted that the applicant was nowhere in the picture. When her husband committed default in repayment of the loans, the applicant was implicated to exert pressure on co-accused – Prashant.

7) Mr. Patil would further urge that investigation qua co-accused Prashant is complete and charge sheet has been lodged. Thus, at this length of time, custodial interrogation to facilitate further investigation is not required. In any event, since the

offence punishable under Section 420 of the Penal Code entails punishment, which may extend to seven years, there is no justification for arrest, submitted Mr. Patil.

8) In opposition to this, the learned APP would urge that there are ten more victims and the amount by which the victims have been defrauded has catapulted to Rs. 1,47,73,000/- Out of the said amount, a substantial amount of Rs.35,00,000/- has been credited to the accounts of the applicant. The learned APP invited the attention of the Court to the statements of the witnesses to counter the submission that the applicant had no role to play in the transactions.

9) Ms. Devyani Kulkarni, the learned Counsel for respondent No. 2 – the first informant supplemented the submissions of the learned APP. It was urged that it was the applicant who had lured the persons to invest in the fraudulent venture run by her husband- Prashant.

10) Evidently, the thrust of the submission on behalf of the applicant was that the applicant was not instrumental in either making a presentation or inducing the investors to part with the amount. She has been falsely roped in only for being the wife of co-accused – Prashant. The material on record, especially the statements of the persons, who were made to invest the amount, prima facie runs counter to the aforesaid claim. Apart from the first informant, who has categorically stated that it was the applicant, who had first induced him and his wife to make the investment, three more witnesses have made statements on similar lines. Mrs. Madhuri Ambekar, one of the schoolmates of the applicant, asserts that the applicant made her to invest the amount on the pretext that her husband was dealing in stock in the share market and the investment would fetch handsome return. Mr. Kamleshwar Shivcharan Singh and Mrs. Soneniya Pawankumar Nekkanti, the parents of the children, who were taking Art classes from the applicant, have also attributed such a role to the applicant. The material on record thus, prima facie, militates against the claim of the applicant that she was completely innocent and had no role in the transactions. Prima facie, the applicant seems to have made representations to induce the unsuspecting persons, with whom the applicant had prior acquaintance. It further appears that different representations were made to the investors about the business the co-accused was dealing in.

11) To add to this, a huge amount of Rs.35,00,000/- allegedly came to be transferred to the accounts of the applicant. The extracts of the bank accounts of the applicant have been tendered for the perusal of the Court in support of the contention that the amounts were credited to her accounts. An endeavour was made to demonstrate that the applicant being an Art Instructor had an independent source of income. I am afraid to accede to this submission. Money trail is prima facie evident. The material on record indicates that part of the amount invested by the investors found its way to the accounts of the applicant.

12) In the aforesaid view of the matter, the custodial interrogation of the applicant appears necessary to facilitate further investigation and unearth the fraud as well as to ascertain the money trail. In the circumstances of the case, it cannot be said that there is no justifiable reason to arrest the applicant. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

13) Hence, the following order.

:ORDER:

I) The application stands rejected.

II) It is clarified that these prima facie observations are confined to determine the prayer for entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]